

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION**

**RICKY LEE RUSHING
ADC #65405**

PLAINTIFF

v.

Case No. 1:14-cv-00028-KGB-JTK

WARDEN GUY, et al.

DEFENDANTS

ORDER

The Court has received three Proposed Findings and Recommendations (“Recommendations”) from United States Magistrate Judge Jerome T. Kearney (Dkt. Nos. 19, 45, 67). Plaintiff Ricky Lee Rushing filed objections only to the first and third Recommendations (Dkt. Nos. 29, 68). There have been no objections filed to the second Recommendation. After a review of all the Recommendations, and the timely objections received thereto, as well as a *de novo* review of the record, the Court adopts in part the first Recommendation, adopts the second Recommendation in its entirety, and declines to adopt the third Recommendation.

The Court writes separately to address Mr. Rushing’s objections to the first and third Recommendations (Dkt. Nos. 19, 67). The first Recommendation recommends dismissal of defendants Marvin Evans, Jr., Chris Goforth, Brenda Bridgeman, Middleton, Jones, Lantz Goforth, Maryl L. Williams, J. Stone, Pickerin, and Brian J. Langston (Dkt. No. 19). Mr. Rushing objects only to the recommended dismissal of Mr. Evans, Jones, Middleton, and Mr. Langston (Dkt. No. 29). In his objections, Mr. Rushing provides additional information regarding these defendants that does not appear in his third amended complaint in an attempt to “cure the deficiencies” (*Id.* at 1), despite the fact that he has already had multiple opportunities to do so. The Court construes Mr. Rushing’s objections as a motion to amend complaint and

directs the Clerk of the Court to file Docket Number 29 as a supplement to Mr. Rushing's third amended complaint. Based on the additional information provided by Mr. Rushing, the Court declines to dismiss Mr. Evans and Jones at this time. However, because it is unclear whether and how the allegations against Middleton and Mr. Langston are related to his claims of deliberate indifference to serious medical needs, the Court adopts the recommendation to dismiss these defendants. *See* Fed. R. Civ. P. 20(a)(2) ("Persons . . . may be joined in one action as defendants if: (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question of law or fact common to all defendants will arise in the action."). For these reasons, the Court adopts in part and declines to adopt in part the first Recommendation (Dkt. No. 19).

The third Recommendation recommends dismissal without prejudice of Mr. Rushing's complaint for failure to prosecute, specifically for failure to notify the Court of his current address and intent to continue with the prosecution of this action (Dkt. No. 67). Mr. Rushing's objections notify the Court of his current address: 209 Capps Road, Judsonia, AR 72081. The Clerk of the Court is directed to update the docket to reflect Mr. Rushing's current address. Because Mr. Rushing now has provided this information, the Court declines to adopt the third Recommendation (Dkt. No. 67).

It is therefore ordered that:

1. Defendants Mr. Goforth, Ms. Bridgeman, Middleton, Mr. Goforth, Mr. Williams, J. Stone, Pickerin, and Mr. Langston are dismissed for failure to state a claim upon which relief may be granted.
2. Mr. Rushing's motions for preliminary injunctions are denied (Dkt. Nos. 5, 15).

3. The Clerk of the Court is directed to file Docket Number 29 as a supplement to Mr. Rushing's third amended complaint and to update the docket to reflect Mr. Rushing's current address: 209 Capps Road, Judsonia, AR 72081.

SO ORDERED this the 6th day of March, 2015.

A handwritten signature in black ink, reading "Kristine G. Baker", written over a horizontal line.

KRISTINE G. BAKER
UNITED STATES DISTRICT JUDGE